

EXHIBIT 5

Plaintiff's Rule 7.1(f) Motion to Strike
Defendant's "Motion to Deem Clerk's Default
Void or in the Alternative, to Set It Aside"

RM WARNER, PLC

8283 N. Hayden Road, Suite 229

Scottsdale, Arizona 85258

Daniel R. Warner, Esq. (AZ Bar # 026503)

Email: dan@rmwarnerlaw.com

Raeesabbas Mohamed, Esq. (AZ Bar # 027418)

Email: Raees@rmwarnerlaw.com

Tel: 480-331-9397

Fax: 1-866-961-4984

Attorneys for Plaintiff

IN SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

RHONDIE VOORHEES, an individual,

Plaintiff,

v.

AUDREY DAVIS and JOHN DOE DAVIS,
husband and wife,

Defendants.

NO. P1300CV202100396

**PLAINTIFF’S RULE 7.1(f)
MOTION TO STRIKE
DEFENDANT’S “MOTION TO
DEEM CLERK’S
DEFAULT VOID OR IN THE
ALTERNATIVE, TO SET IT
ASIDE”**

Plaintiff, by and through counsel undersigned, respectfully requests that the Court enter an order striking Defendant’s Motion To Deem Clerk’s Default Void Or In The Alternative, To Set It Aside (the “Improper Motion”). The Improper Motion is premature and essentially prohibited by 50 U.S.C.A. § 3932(e). The Improper Motion is based on and seeks to use the protections afforded by 50 U.S.C. § 3931. However, pursuant § 3932(e), “[a] servicemember who applies for a stay under this section and is unsuccessful may not seek the protections afforded by section 3931 of this title.” 50 U.S.C.A. § 3932(e).

Defendant has already sought a stay/continuance from this Court under § 3932 and

1 has been unsuccessful to date. Therefore, the Improper Motion is premature and should be
 2 stricken pursuant to Rule 7.1(f), which states that “a motion to strike may be filed only if it
 3 is expressly authorized by statute or other rule, or if it seeks to strike any part of a filing or
 4 submission on the ground that it is prohibited, or not authorized, by a specific statute, rule,
 5 or court order.” Ariz. R. Civ. P. 7.1(f)(1).
 6

7 If Defendant is successful on the motion she filed under § 3932 (which she
 8 shouldn’t be), only then would Defendant be permitted to seek relief under § 3931. If that
 9 wasn’t the case, the prohibition under § 3932(e) would be rendered completely pointless
 10 because defendants would simply file several motions at once or in a staggered manner like
 11 Defendant has done. Accordingly, the Improper Motion should be stricken.
 12

13 RESPECTFULLY submitted this 8th day of October, 2021.
 14

15 **RM WARNER, PLC**

16 By: /s/ Daniel R. Warner
 17 Daniel R. Warner, Esq.
 18 8283 N. Hayden Road, Suite 229
 19 Scottsdale, Arizona 85258
 20 *Attorneys for Plaintiff*

21 **COPY** of the foregoing filed
 22 this same date with the Clerk of the Court

23 **COPY** of the foregoing
 24 emailed (per agreement) this same date to:

25 Marc J. Randazza
 26 RANDAZZA LEGAL GROUP, PLLC
 27 2764 Lake Sahara Drive, Suite 109
 28 Las Vegas, NV 89117
 Attorneys for Defendants

/s/ Anne E. Griffith